THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO.699 of 2006

31st July 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 06.07.2005 in W.P.NO.16556 OF 1998 on the file of the High Court.)

Between:

M/s.Bharat Heavy Plate & Vessels Limited, Visakhapatnam, rep.by its Managing Director, Visakhapatnam.

...APPELLANT

AND

G.Krishna Murthy, S/o.Late Narasimha Swamy, 61 years, R/o.MIG 36 Lawsons Bay Colony, Visakhapatnam.

...RESPONDENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO.699 of 2006

JUDGMENT: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Heard Sri P.Nageswara Sree, learned counsel for the appellant and Sri K.V.Subrahmanya Narasu, learned counsel for the respondent and at their request, the Writ Appeal itself was taken up for disposal at the admission stage.

Aggrieved by the order passed in W.P.No.16556 of 1998 dated 06.07.2005 whereby, the learned Single Judge had allowed the Writ Petition as prayed for and directed the respondents to pay wages to the petitioner for the period from 13.04.1987 till he attained the age of superannuation on 15.06.1995, in terms of the earlier judgment of this Court with all consequential benefits, within a period of three months from the date of receipt of a copy of the order, the present Writ Petition is filed.

Facts, in brief, are that the writ petitioner was working as a

Cost Accounts Officer in the Appellant Company. His services were terminated with effect from 13.12.1974 by paying three months pay in lieu of notice. Aggrieved thereby, he filed W.P.No.2735 of 1981, which was allowed on 13.04.1987 directing the appellant to reinstate the writ petitioner into service and if the management so desire, to conduct an enquiry to find out his suitability for continuance in service, after giving him reasonable opportunity. This Court also made it clear that the order did not preclude the authorities to give consequential benefits of continuity of service to the writ petitioner. This Court, however, denied payment of back wages to the petitioner for the lapse on his part in approaching this Court for nearly five years after he was terminated from service. Aggrieved by the order in W.P.No.2735 of 1981 dated 13.04.1987, both the writ petitioner and the appellant filed appeals in W.A.Nos.272 of 1988 and 1105 of 1993 and the order of the learned Single Judge in W.P.No.2735 of 1981 was suspended during the pendency of the Writ Appeals. Both the Writ Appeals were eventually dismissed on 20.07.1995. Aggrieved thereby, the appellant herein approached the Supreme Court and the Special

Leave Petition was dismissed by order dated 16.08.1996. In the interregnum, the writ petitioner attained the age of superannuation on 15.06.1995. He filed a representation before the appellant seeking payment of wages for the period from 13.04.1987 till the date of superannuation i.e. up to 15.06.1995. By proceedings dated 31.10.1995, the Senior Personnel Officer (Legal) of the appellant company while informing the petitioner that, though he was eligible for payment of wages for the period from 13.04.1987 to 15.06.1995 in terms of the judgment of this Court, he was not entitled for any remuneration if he had been gainfully employed elsewhere and was drawing remuneration equal to or more than what he would have got if had continued in the service of the appellant company. The appellant sought details with regard to the earnings of the writ petitioner as he had started a Chartered Accountant firm in the name of M/s.Grandhi & Company in 1977 which was functioning from A.V.N.college, Visakhapatnam. The Appellant informed the petitioner that he was not entitled for back wages as claimed. Aggrieved thereby, the petitioner filed W.P.No.16556 of 1998. The learned Single Judge by order dated 06.07.2005, while allowing the

writ petition, held that it was unfortunate that the management of the stature of the Appellant, which was supposed to be a model employer, had taken such an objection and had sought for certain information as if it was adjudicating the matter afresh for the purpose of payment of wages for the period from 13.04.1987 to 15.06.1995. The learned Single Judge noticed events commencing from and subsequent to the disposal of W.P.No.2735 of 1981 and held that it was the appellant, who had prevented the writ petitioner from attending duty and it could not, therefore, be said that there was any lapse on the part of the petitioner.

With regard to the contention that the petitioner was gainfully employed elsewhere, this Court held that the stand taken by the management was unreasonable inasmuch as they had suffered a judgment of this Court and that of the Supreme Court. The learned Single Judge held that while it was open for the management to agitate the issue relating to the petitioner's re-entitlement for wages either in the Writ Appeals filed earlier before this Court or the Supreme Court, since no such plea was taken or a decision invited, it was not proper on the part of the management to raise the issue at

this time and this practice deserved condemnation. The Learned Single Judge took note of the judgment of the Allahabad High Court in ***Rajendra Prasad v. State of Uttar Pradesh***[1] wherein it was held that any amount, which an employee earned to make both ends meet could not be said to be gainful employment. The learned Single Judge was of the view that the appellant herein had taken an unreasonable objection as regards payment of wages to the writ petitioner for the period from 13.04.1987 to 15.06.1995 and that the petitioner was therefore entitled to wages for the said period in terms of the earlier judgment of this Court which had attained finality in the Supreme Court. Aggrieved thereby, the Writ Appeal is filed.

Sri P.Nageswara Sree, Learned Counsel for the appellant, would submit that the contention with regard to the petitioner being gainfully employed could not have been taken in the earlier writ proceedings before this Court or in the Writ Appeals filed there against or even before the Supreme Court in the Special Leave Petition. Learned counsel would submit that the petitioner was gainfully employed in a Chartered Accountant firm and the amount, which he received during his practice had necessarily to be

deducted from the amount liable to be paid to him consequent upon his reinstatement. Learned counsel would state that, in any event, the order of the learned Single Judge granting the relief as prayed for would mulct an enormous liability on the appellant herein as the Learned Single Judge had directed payment of 24% interest with all consequential benefits as sought for by the petitioner, including promotion. According to the learned counsel, promotion in appellant company is not merely on the basis of seniority but is through process of selection and as such in the absence of the petitioner having undergone a process of selection he was not entitled for promotion or for notional fitment consequent upon his being appointed in the promotional post. Learned counsel would submit that the appellant herein, being a Government Company, was entitled to ensure that the petitioner did not enrich himself at its cost and to the extent he received amounts, in his practice as a Chartered Accountant, the appellant could not be mulcted with liability.

S r i K.V.Subrahmanya Narasu, learned counsel for the respondent-petitioner, on the other hand would submit that the

action of the appellant in denying the amounts legitimately due to be paid to the petitioner necessitated the Writ Petition being allowed with interest @ 24% per annum. Learned counsel would submit that the amount of interest @ 24% granted by the Learned Single Judge in his discretion did not call for interference in appellate proceedings. Learned counsel would draw attention of this Court to the reply affidavit filed by the petitioner wherein he contended that during the period 1987-88 till 1994-95 he received a total amount of Rs.34,206/- (Rupees thirty four thousand two hundred and six only) which is less than Rs.5,000/- (Rupees five thousand only) per year and less than Rs.500/- (Rupees five hundred only) per month. According to the learned counsel, this meager amount, which the petitioner received, which was hardly suffered to make both ends meet, could not be said to be gainful employment.

We find considerable force in this submission. The tabular statement in the reply affidavit does indicate that the amount, which the petitioner received while practicing, as a Chartered Accountant, was less than Rs.500/- (Rupees five hundred only) per month. No evidence to the contrary has been placed by the appellant before

us. This meager amount of Rs.500/- (Rupees five hundred only) per month would be insufficient even to make both ends meet and cannot by any stretch of imagination be said to be gainful employment. There was no justification whatsoever on the part of the appellant in not paying the amount legitimately due to the petitioner on the erroneous premise that the petitioner was gainfully employed as a Chartered Accountant. The discretion exercised by the learned Single Judge in allowing the Writ Petition does not call for interference. While it may be true that the appellant could not have raised this plea in the earlier proceedings, the plea now taken, in the absence of any evidence that the facts as placed by the petitioner before this Court with regard to the income he received through his practice as a Chartered Accountant is not true, cannot be accepted nor is the appellant justified in denying the petitioner the amounts payable to him from the date of his reinstatement till the date he reached superannuation. We see no reason to interfere with the order of the learned Single Judge with regard to payment of wages, increments, benefit of revision in pay scales etc. With regards promotion, in case promotion is based only on seniority, the

petitioner would be entitled for notional fitment in the higher post. If, on the other hand, promotion is through a process of selection, the order of the learned Single Judge cannot be construed as entitling the petitioner for promotion even if the basis on which promotion is made is through a process of selection. The order of the learned Single Judge is confirmed except to the extent of payment of interest @ 24% per annum. This rate of interest is undoubtedly high. We consider it appropriate to grant 12% simple interest per annum on the amounts due and payable to the petitioner. The appellant herein shall make payment of the amounts due to the petitioner along with interest @12% simple interest per annum from 11.10.1998 when W.P.No.16556 of 1998 was filed till the date of actual payment. The amount aforementioned shall be paid within a period of three months from the date of receipt of a copy of this order. No costs.

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(B.PRAKASH RAO, J)

(RAMESH RANGANATHAN, J)

31st July 2006
RRB

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[1] 1989 Allahabad Weekly Cases 587